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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1072

GLENN R. HEYMAN, TRUSTEE IN BANKRUPTCY OF F. W. KOENECKE & SONS, INC.,

Petitioner,

vs.

GEORGE E. MAHIN, SUCCESSOR DIRECTOR OF THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS, ET AL.,

Respondent.

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Cook County, Illinois, (unreported); the opinion of the Illinois Supreme Court, Docket No. 42544 reversing and remanding the judgment of the Circuit Court of Cook County (unreported), and the opinion of the Illinois Supreme Court upon rehearing, affirming the decision of the Circuit Court

of Cook County, reported at 49 Ill. 2d 284, 275 NE 2d 421, rehearing denied November 24, 1971, are all attached to the Petition for Writ of Certiorari filed by Petitioner, Glenn R. Heyman, Trustee in Bankruptcy of F. W. Koenecke & Sons, Inc.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition for Writ, except that such statement and the balance of the Petition show that the Petition raises no substantial question of federal law.

QUESTIONS PRESENTED

The question is whether the state-enacted graduated declining discount rate system of compensating cigarette distributors for affixing cigarette tax stamps under a State Tax Act raises any important question of federal law and whether such system is in any way violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and statutory provisions involved are adequately set forth in the Petition for Writ of Certiorari filed herein.

ADDITIONAL STATEMENT OF CASE

Respondent is obliged to take issue with the purported facts as set forth in Petitioner's Statement of Case, which in the judgment of Respondent fail to clearly set forth those facts and are replete with conclusions. In other respects, the "Statement" is misleading.

To put this case in the proper context, we accept the first paragraph of the Statement of Case as it appears in the Petition for Writ of Certiorari. It is true that from 1941 to 1963 the discount to cigarette wholesalers was five percent (5%) regardless of the volume of a distributor's annual tax purchase, and that in 1963 the statute was amended by discontinuing the flat 5% discount granted to distributors on the purchase of tax stamps. The program was replaced with a graduated declining discount rate measured by the dollar amount of tax stamps purchased in any year. The schedule of discounts is correctly set forth in the footnote on page 7 of the Petition.

Petitioner states on page 7 of its Petition that "From the time of its enactment in 1963 to the summer of 1968, the graduated feature of the discount system was not enforced". This statement and the statement that follows are both factually incorrect and totally misleading. In 1968 the Department of Revenue became aware that F. W. Koenecke & Sons, Inc. was fraudulently making applications for distributor's licenses under names of various employees in order to qualify as distributors, which would then permit them to purchase cigarette tax stamps at the more favorable discount rate. In many instances the applications were filed in the names of part-time employees as wholesale cigarette distributors. Those employees testified under oath in Case No. 69B1647, U. S. District Court,

for the Northern District of Illinois, Eastern Division, that the signatures on those applications for license were forged. Those employees also testified that they never engaged in the business of selling cigarettes as wholesale distributors, never actually purchased cigarettes at cost from a manufacturer, never purchased any tax stamps from the State of Illinois, and never filed any tax returns as wholesale cigarette distributors. In several instances, long-time employees of Robert Koenecke (sole stockholder of Petitioner) were induced to sign the applications for license. They testified they were never given an explanation as to the nature of the forms they signed and the forms were not filled out at the time they signed them. In at least 10 of 12 instances the signatures were forged. By this method of setting up alleged multiple distributorships, Robert Koenecke was able to purchase for his company cigarette tax stamps on which he was able to receive the highest percentage of discount.

Upon learning of the possible fraud, the Department of Revenue thereupon issued an order which, in effect, denied to the fraudulent distributorships set up by Robert Koenecke the right to purchase tax stamps. Thereafter, a suit was filed by F. W. Koenecke & Sons, Inc. seeking a declaratory judgment as to the validity and constitutionality of the amendments to Section 2(b) of the Illinois Cigarette Tax Act (Ch. 120, Sec. 453½ et seq. Ill. Rev. Stat.) enacted in 1963.

In its complaint, F. W. Koenecke & Sons, Inc. alleged that it was the largest cigarette distributor in the Midwest and that the amendments to the Cigarette Tax Act "have had a materially adverse and devastating effect on plaintiff's business operations in that, predicated on a declining graduated discount, it is compelled to pay more

for the cigarette tax stamps it purchases from the State of Illinois than its smaller competitors. Plaintiff's purchases of approximately $700,000.00 in tax stamps per week would have the effect of placing it within 30 days of any year in the lowest discount bracket." (*See Pet. A7-8.)

The complaint further alleged that the amendments "had as their express purpose the intent to enact class legislation to the detriment of plaintiff and to the advantage of its competitors". And that the amendatory acts

> "will have the effect of converting said Act into a restrictive statute with the *avowed* purpose of placing plaintiff in the untenable position of being unable to compete with smaller cigarette distributors. . . ." (See Pet. A8.)

The trial court in its opinion stated:

> "The Court does not believe that the General Assembly would deliberately enact legislation specifically intended to injure plaintiff or provide an advantage to the competitor of the Plaintiff." (Pet. A19.)

Having all the facts, as set forth in Koenecke's amended complaint, before it, the Illinois Supreme Court nevertheless held that the only question before it was whether or not the amendment to the Cigarette Tax Act was constitutional. It held that the said amendments met the constitutional tests.

Subsequent to the filing of the amended complaint by Koenecke, an order was entered by the Circuit Court of Cook County directing the defendants in that case, including Respondent herein, to segregate and hold aside from the general fund of Illinois the difference (paid under protest by Koenecke), between the amount paid by Koenecke for the tax stamps at the lowest discount rate and the amount which it would have been charged with at the highest discount rate.

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* PET. A refers to the page of Appendix to Petitioner's petition for writ of certiorari.

Before the case could be determined, an involuntary petition in bankruptcy was filed against Koenecke and, thereafter, Petitioner sought and was given permission by the District Court to be substituted for Koenecke in the instant case. Thereafter the matter was heard by the Circuit Court of Cook County and was determined in favor of the defendants (including Respondent herein). Petitioner then appealed directly to the Illinois Supreme Court.

It is correct that on December 4, 1970, the Illinois Supreme Court reversed a judgment of the Circuit Court of Cook County and ordered the case remanded but, as will be shown hereafter, upon the filing of a Petition for Rehearing, the Supreme Court totally ignored the opinion rendered by Mr. Justice Crebbs (which was not published) and rendered its official opinion through Mr. Justice Ryan affirming the decision of the Circuit Court of Cook County. This opinion appears at 49 Ill. 2d 284, 275 NE2d 421, and in Petitioner's Appendix A. 1-2).

ARGUMENT

Respondent admits that the proceedings in the Illinois Supreme Court were highly unusual. We respectfully submit that after the filing of Justice Crebbs' opinion (which was not published) and upon the filing of the Petition for rehearing by Respondent, the Illinois Supreme Court quickly recognized that an erroneous interpretation of the law had been rendered over the signature of Justice Crebbs.

The Illinois Supreme Court, thereupon speaking through Mr. Justice Ryan, tactfully and mercifully ignored the opinion of Justice Crebbs and wrote its own opinion which set forth the correct interpretation of the law as it related to the Cigarette Tax Act. We believe that it is highly improper for Petitioner to even allude to the first opinion since it did not officially represent the position ultimately taken by the Illinois Supreme Court. A careful reading of the published opinion shows that the Illinois Supreme Court merely followed its uniform position in its previous utterances dealing with the Revenue Act of Illinois.

There are two conflicting arguments used by the Petitioner. The first is that as a result of the onerous provisions of the amendment, there would be a "destruction of Koenecke's business as a result of the enforcement of the graduated discount provisions". The second argument is that "the economic impact upon the person bearing the burden of the discriminatory provision is controlling".

As clearly set forth in the Illinois Supreme Court opinion, the impact of the tax is not upon the distributor but upon the ultimate consumer. As a matter of fact, the distributor receives, by legislative grace, compensation for his handling the cigarette tax stamps. As the opinion fur-

ther pointed out, under Illinois law which is controlling, the legislature is not obliged to compensate the distributor at all. The cost of handling the stamps and affixing them to packages of cigarettes is simply a part of the cost of doing business, just as the machinery, equipment, employees, etc. are part of the cost of doing business. All of these costs are reflected in the distributor's selling price to the retailer. The distributor has, therefore, no cause to complain as to the amount of discount gratuitously allowed him by the legislature.

Respondent suggests that, while F. W. Koenecke & Sons, Inc. had during the lifetime of Robert Koenecke's father and brother become the largest cigarette distributing agency in the Midwest and, presumably, a profitable one, it was not destroyed within a scant six months after Robert Koenecke became the sole stockholder simply because he was required to comply with the law. It was destroyed because his fraudulent practices became known to his creditors who filed an involuntary Petition in Bankruptcy. In any event Respondent further suggests that the honesty or dishonesty of Koenecke raises no important Federal question of law.

Respondent further suggests that at the time Justice Crebbs rendered his opinion in Petitioner's favor, the facts as subsequently appeared in the testimony in Case 69B1647 were not a matter of public record and were therefore, not available to the Illinois Supreme Court.

In its Petition on page 13, Petitioner submits that certiorari should be granted because the "economic impact" of the "tax" was upon Koenecke, who was obliged to bear the "burden" of the "discriminatory provision". The Illinois Supreme Court in its opinion disposed of this contention (Pet. A40) where it stated:

> "The impact of the tax levied by this Act (Cigarette Tax Act) is hereby declared to be imposed upon the retailer and shall be prepaid or pre-collected by the distributor for the purposes of convenience and facility only, and the amount of the tax shall be added to the price of the cigarettes sold by such distributor." (Ch. 120, Sec. 453.2, Ill. Rev. Stat. 1967)

The fact remains that Koenecke was wholly reimbursed for the cigarette tax stamps purchased by it by the retailers to whom the cigarettes were sold, as shown in Robert Koenecke's deposition taken on November 5, 1969 (excerpts from which deposition are attached as an Appendix hereto. See Res. A——).*

As the Illinois Supreme Court stated in its opinion (Pet. A41):

> ". . . Since the 1963 amendment to the Act as above stated the incidence of the tax is clearly on the retailer and not on the distributor. As Mr. Justice Roberts stated in *Monamotor Oil Co.* v. *Johnson*, 292 U.S. 86, 78 L. ed. 1141, at page 1148: 'The short answer to the contention is that the statutes properly construed lay no tax whatever upon the distributors, but make of them mere "collectors", and at 1147, "Instead of collecting the tax from the user through its own officers, the state makes the distributor its agent for that purpose. This is a common and entirely lawful arrangement." (78 L. Ed. at 1148). See also *Pierce Oil Corp.* v. *Hopkins*, 264 U. S. 1376, 68 L. Ed. 593; *International Harvester Co.* v. *Wisconsin Dept. of Taxation*, 322 U. S. 435, 88 L. Ed. 1373, 51 Am. Jr., Taxation, sec. 277.
>
> "The plaintiff therefore was not a taxpayer subsequent to the 1963 amendment to the Act but was instead acting solely as an agent for the State in the collection and the remittance of the tax. Since we have determined that no tax is imposed on the distributors of cigarettes under the provisions of section 2(b) of the

(* RES. A—— refers to respondent's appendix)

Act, the graduated discount provision thereof cannot therefore violate section 1 of article IX of the Illinois constitution of 1870 (uniformity provision)."

It is further contended by Petitioner that the Illinois Supreme Court erred in characterizing "an admitted allegation" as a "conclusion" because it had been treated as a fact by the parties and "by the Illinois Supreme Court in its first opinion". We deem it highly improper for the Petitioner to repeatedly refer to the unpublished "first opinion". It should require no citation of authority that a determination of a court of appeals is expressed only in its *published* opinions and that the decision reported at 49 Ill. 2d 484; 275 NE2d 421, rehearing denied 11/24/71, is the *only* official opinion.

We respectfully draw the Court's attention to the opinion of the Illinois Supreme Court (Pet. A43, 44) where the court carefully examined the contention, made in the Petition for Writ of Certiorari herein, that the state's motion to strike the complaint "admitted the facts of the complaint". In overruling that contention, the court cited the case of *Pacific States Box & Basket Co. v. S. T. White, et al.*; 80 L. Ed. 146, 296 U. S. 176, and repeated the oft-stated legal truism that "The burden is not sustained by making allegations which are merely the general conclusions of law or fact * * * Facts relied upon to rebut the presumption of constitutionality must be specifically set forth * * * A motion to dismiss * * * admits only facts well pleaded" and concluded that: "A motion to dismiss does not admit conclusions of facts unsupported by specific allegations of fact upon which such conclusions rest (citations)"

The Petitioner also contends that the Illinois legislature, contrary to the Equal Protection clause of the Four-

teenth Amendment, created a taxing system "so discriminatory and invidious as to force Petitioner into bankruptcy, while permitting its many low volume competitors to prosper". Surely, a motion to strike does not admit this to be a fact. This is obviously a conclusion. We take issue with the assertion by Petitioner that:

> ". . . the Illinois Supreme Court had no right on the record before it to disregard Petitioner's allegation forming the basis of the discrimination charge, namely that 'costs do not decrease with increased collections' and then in effect make a factual determination to the contrary. This determination is a most flagrant denial of petitioner's federal constitutional rights in view of the present undeniable fact, *prophesied in the amended complaint, that the original corporate plaintiff is now in bankruptcy*". (Petition, p. 16) (emphasis added)

This assertion is not warranted, as shown in Appendix hereto attached (see excerpts from depositions of Robert Koenecke and employees of F. W. Koenecke & Sons, Inc., Res. A—— et seq.) It was the fraud perpetrated upon the State which obliged the State to terminate the licenses of the pseudo-distributors set up by Koenecke and the unfavorable publicity that followed which undoubtedly led to the involuntary bankruptcy being instituted by the creditors of Koenecke, and not the action of the state legislature in enacting the amendment to the Cigarette Tax Act, nor the action of the Department of Revenue in carrying out that amendment.

We respectfully direct the attention of this Court to the opinion of the trial court (Pet. A20), where the court quoted the Illinois Supreme Court in *Mansfield* v. *Carpentier*, 6 Ill. 2d 455, 129 NE2d 166:

> ". . . . neither is the fact that a tax may put some individual out of business considered a valid argument

against the tax, if the tax otherwise is reasonable in relation to the cost. . . ."

In *Mutual Tobacco Co. v. Halpin*, 414 Ill. 226, 111 NE 2d 155, the court emphasized that:

". . . absolute equality is impractical in taxation and is not required by the Equal Protection clause of the constitution. . . ."

Even assuming for the purposes of this argument that the complained-of amendment to the Cigarette Tax Act which graduated the rates on a declining basis based on gross sales of tax stamps would, in fact, place Koenecke at a competitive disadvantage, there were no facts alleged to justify the assertion made in Koenecke's amended complaint that:

". . . the acts of the General assembly in its successive amendments . . . had as their *express* purpose the intention to enact class legislation to the detriment of plaintiff and to the advantage of its competitors." (Pet. A8) (Emphasis supplied)

Clearly, this is a conclusion.

We do not wish to burden this Court with a repetition of the arguments used here by Petitioner, nor to discuss the citations presented by it, since these same contentions and and citations were submitted to the Illinois Supreme Court and, as shown in its decision (Pet. A37-46), the Illinois Supreme Court carefully considered all the arguments and distinguished the cases cited by Petitioner.

Finally, we direct the attention of this Court to the assertion made by this Respondent initially, namely that no substantial federal question is here involved to justify certiorari. We respectfully direct this Court's attention to 28 U.S.C. 1341, which provides:

> "The district courts will not enjoin, suspend or restrain the assessment, levy or collection of any tax under state law where a plain, speedy and efficient remedy may be had in the courts of such state."

In the recent case of *Pintozzi v. Scott*, 436 F. 2d 375, it was alleged by appellant that substantial constitutional rights were denied by the state court as it related to the action of the state court in appointing a Receiver for the property of appellants arising from an action brought by the state for the collection of taxes. The court ruled that the action was barred by 28 U.S.C. 1341. Surely, if the Circuit Court of Appeals felt itself barred from interfering with a state court assessment, it would appear that no substantial federal question exists here to justify this Court assuming jurisdiction on a matter wholly concerned with state taxation. In fact, the question here is not even one of state taxation. It really involves the sole question of whether or how much a state is obliged to allow a distributor for performing a tax collection service. In this connection the Illinois Supreme Court held:

> "There is no constitutional right to such compensation. Had the legislature seen fit it could have made no provision for compensation to the distributor to cover the cost of collecting the tax." (*Sherman-Reynolds, Inc.* v. *Mahin*, 47 Ill. 2d 323, 265 NE2d 640)

We direct the attention of this court to the Illinois Supreme Court's reasoning as it appears in its opinion (Pet. A42). To the same effect as *Pintozzi*, *supra*, are the cases of *City of Houston* v. *Standard Triumph Motor Co., Inc.*, 347 F. 2d 194, cert. den. 86 S. Ct. 539, 382 U. S. 974, 15 L. ed. 2d 466; also to the same effect, *Gray* v. *Morgan*, 371 F. 2d 172, cert. den. 87 S. Ct. 1484, 386 U. S. 1033, 18 L. ed. 2d 596.

CONCLUSION

For the reasons above set forth, we respectfully request that the Court deny the Petition for Writ of Certiorari or, in the alternative, affirm the decision of the Illinois Supreme Court.

Respectfully submitted,

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APPENDIX

(From Examination of Robert F. Koenecke taken before Referee Schaefer on November 5, 1963)

33 A I don't remember, Mr. Makar.

Q I call your attention to paragraph appearing on the second column about close to the middle of the page, where it says, "'. . . less there be any further misunderstanding no package of cigarettes is sold by us without the State receiving its present tax of 9 cents per package of 20.'' Our gross cigarette tax is based on our cigarette purchases not sales.''

Do you recall that statement, sir?

A Yes.

Q Did you compose that statement?

A No.

Q Who composed it?

A Mr. Simon.

Q When you signed it, did you read that statement?

A Yes.

Q And at that time were the statements contained insofar as that portion of the statement that I just read to you, was that true?

A Yes.

Q So that on all of the cigarettes that were sold by either — to the wholesaler or the retailer, by your firm having tax stamps, you collected that face value of the
33a tax stamp from the wholesaler or the retailer, am I correct?

A Yes.

Q And that was true from the time of incorporation up until June 30, 1968, sir?

A Yes.

Q Sir, in 1958, when you incorporated, how many employees to the best of your knowledge, did you have at that time?

A I don't know.

Q Can you give us any estimate, or to the best of your knowledge, how many employees you had? Was it 50? Was it 100?

A I can't.

Q Did you have in excess of 200 employees?

A We never had 200.

Q Well, did you have more than 150?

A I don't know.

Q Sir, within your organization from the time of incorporating up until June 30, 1968, who had charge of hiring the employees that were employed by F. W. Koenecke & Sons?

A My brother at the time of his death, and after that it was Edward Klopp.

(From the Examination on July 17, 1969 of Robert E. Koenecke before Referee Elmer P. Schaefer in Case No. 69 B 1647)

63 or corporation, the nature of your relationship with other firm or corporation.

You indicated there you were president of F. W. Koenecke & Sons, Inc., 13136 South Western Avenue, Blue Island, Illinois.

A Yes.

Q Now those statements that you have just read — that I have just read to you beginning with questions and answers with No. 10 and ending with question and answer 11, those were true, is that right, sir?

A Yes.

Q Now with respect to the applications of the remaining individual licenses, I am sorry, applicants for licenses which are represented by these group documents, Exhibit A, did you talk to any of those individuals concerning the applications?

A Yes.

Q Did you talk to each one of them, sir, or to whom did you talk to?

A I got them in a group, and I said if we want to keep this volume we have to use your names for licenses.

Q When did you do that, sir?

64 A. When I first started.

Q When would that be, sir?

A That would be around 1962, when the law went in.

Q You mean in August, around there?

A Yes. I talked to them. I seen them every day, and I would say we are ready for another license, and I would say fellows, I am going to use your name.

Q Would you please examine these applications and tell us which of these applicants told you that you could use their name, sir?

A All of them did. I would say all of them did. That I asked. Some of my other people asked them.

Q I want to know, sir, which are the ones which you personally asked, and in which you personally received a response from the individual whose name appears on that application? Will you please examine these?

A I can't remember that.

Q To the best of your memory, could you give us by going through each one?

A I can't.

Q You cannot.

65 Sir, did you, at that time, explain to any of these individuals, whom you said you had gathered, that if they signed the applications and gave the answers that are listed, that they would not be telling the truth?

A I just asked them if I could use their name and have them sign them.

Q Did any of them indicate that they would do any business in their own individual capacity?

A No. No.

Q Did any of them indicate that they would have a business name?

A No.

Q Did any of them indicate to you that they would have a business banking account in any bank?

A No.

Q Did any of them indicate to you, sir, that they would lease any portion of the premises —

A No.

Q — where the business or the alleged business is to take place?

A No.

Q Did you advise them, at that time, as to what information you would put down on applications?

66 A No. I never filled out an application.

Q Well, these applications incidentally were made upon your direction, were they not?

A Yes.

Q You instituted or requested that they be made out, sir?

A Yes.

Q And the sole purpose of the applications was to obtain a license so that you would obtain a higher discount?

A Yes.

Q For F. W. Koenecke & Sons, Inc., is that correct?

A Yes, sir. Yes, sir.

Q And that was true from the period of July 1st, 1965 up to and including June 30, 1968?

A Right, yes.

Q Is the purpose of the bonds of each individual licensee for that main purpose —

MR. LEVIT: Objection, your Honor. He can't tell what the purpose of the bonds are. These are issued by the bonding companies of the licensees.

THE REFEREE: Do you want to rephrase that?

MR. MAKAR: Yes, your Honor.

72 bearing application No. 1304, would your answers be the same to each of those as your answer was to Fred Thomason, application bearing 1116?

A Yes, same answer.

Q Now, did you know John H. Buck, Mark P. Cowley, Guy DeLisa, James Hansen, William McKeon, Joseph

Shaugnessy, Eugene Sullivan, Helman Works to have also been policemen for the City of Chicago?

A I knew that.

Q At the time that they were working for you, sir?

A I knew that, I did.

Q Do you understand whether or not any of those individuals signed the particular application?

A I don't know.

Q Now, these applications were made out by whom, sir?

A Harry Rutnick was my attorney at the time. He made them out or somebody in his office.

Q Pardon?

A Or somebody in his office.

Q And that would be where, sir?

A 29 South LaSalle.

Q Did Mr. Rutnick or anyone from his office come
73 to your business address — by that, I mean the business address of E. W. Koenecke & Sons, at 13136 South Western Avenue, for the purpose of having any of these individuals sign any of these applications?

A No.

Q Do you know whether or not any of these individuals, other than yourself, ever went to Mr. Rutnick's office or any members of his firm to sign any applications?

A Not that I know of.

Q When would you decide that another application should be submitted to the State of Illinois in any individual's name for the purpose of securing a license, as a licensed distributor?

A I had a fellow upstairs that made out the requests, and he kept track of the $700,000. And he decided when we would apply for another license.

Q What was that man's name, sir?

A Fred Sonizer.

Q Was he the individual who kept a tabulation?

A Yes.

Q Of all of the stamp purchases from the time of July 1st, 1965 up to and including June 30, 1968?

A Yes.

78 Q And he would also put in the license all the information called for therein?

A Yes.

Q Now he would list under the name the individual bearing the license number and also the name of the business, am I correct?

A Right.

Q And he would list the address as the business address of that particular individual at 13136 South Western Avenue, Blue Island?

A Yes.

Q Now would he also indicate, sir, where it says, "Authorized by," and sign his name to that, sir?

A Yes.

Q As the purchasing agent of the individual licensee?

A Yes.

Q Who gave him instructions to sign on behalf of the individual licensees?

A They came out for years. Nobody. He just did it and he always seemed to be right.

Q Did any of the individual licensees, that is individual persons in whose names these licenses were procured, did they, at any time, authorize Mr. —

79 A No.

Q — Mr. Sonizer to sign as purchasing agent on their behalf?

A No.

Q Now after the cigarette tax stamp order was filled out and the names of the individual licensees or in the name of F. W. Koenecke & Sons Inc., whichever was used at the time by yourself and Mr. Sonizer, what would be done with that form, sir?

A Give it to him or express with a certified check and go pick up the stamps.

Q Whose check was that, sir?

A Koenecke Incorporated.

Q And would that form also contain the amount of the stamps purchased?

A Yes.

Q And would that form also contain the amount of the discount being taken —

A Yes.

Q — by the individual licensee?

A Yes.

Q And then the amount of the check would be the same amount as the net after the discount was taken, is that correct?

(From Deposition taken October 30, 1969 at the Office of the Attorney General)

(Witness sworn)

MR. MAKAR: Let the record show that this is a deposition being taken pursuant to the Bankruptcy Act and the Federal Rules of Court.

JOHN P LEEHY, called as a witness by the Department of Internal Revenue herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Makar:

Q Sir, would you please state your full name.

A It's John Patrick Leehy.

Q Would you please state your residence address.

A 10307 South Homan.

Q Is that Chicago, sir?

A That's Chicago.

Q How long have you resided there?

A Oh, several years.

Q Approximately?

A I think approximately since 1963.

Q How old are you, sir?

A I'm twenty-six years old.

Q What is your business or occupation?

A Chicago Police Officer.

Q What particular branch are you assigned to?

A I'm at the Kensington Station which is District 5.

Q How long have you been a police officer?

A Four years.

Q Sir, were you ever employed by a firm known as F. W. Koenecke and Sons, —

A Yes.

Q Incorporated?

A Yes, I was.

Q Where were they located?

A 131st and Western.

Q And when were you employed by them?

A Oh, exact dates, I couldn't give you, but it was last year — well, actually, I think I started in 1967 and worked through the winter of 1967 and 1968.

Q When did you terminate your employment with them?

A Oh, I think it was approximately in January or February, but I'm not real sure, you know, of the exact date.

MR. FREEMAN: Of 1969?

MR. HEYMAN: Of 1969 or 1968.

THE WITNESS: 1969.

MR. FREEMAN: Of this year?

THE WITNESS: I think it was right near the end of the year, or the beginning of the new year, you know.

MR. MAKAR: Q Well, then, you started in 1967; as far as you can remember?

THE WITNESS: A 1968.

Q You started in 1968. And when, what month, do you recall?

A If you are familiar with when it hit the newspapers,

when they had the, you know, the cigarette tax stamp — they were having — they had a scandal in the newspapers about that, that Koenecke was using, you know, starting to form a new company each time and were getting a tax rebate?

MR. HEYMAN: I hit the newspapers before the November election.

MR. MAKAR: Q That's when you quit?

THE WITNESS: A That's when I quit, I don't remember the exact date.

Q When did you start, sir, do you recall?

A Well, let's see, I worked for approximately five or six months.

Q You worked five or six months?

A Right.

Q And you quit right after the newspaper publicity came out concerning the operations of F. W. Koenecke and Sons, is that right?

(Whereupon, the Reporter marked said document as Department's Exhibit No. L-1303 for identification.)

MR. MAKAR: Q Mr. Leehy, I hand you a document which has now been marked as Department's Exhibit A-1303 for identification, and would you please examine the face of that document and also the reverse side, and I call your attention to a signature or a purported signature which appears on the reverse side of the document.

THE WITNESS: A Yes.

Q There is a written signature there of John P. Leehy, do you see that, sir?

A. Yes.

Q. I ask you, sir, is that your signature? In other words, did you sign it?

A. No, I did not.

Q. Did you authorize anyone to sign your name to that document?

A. No, I did not.

Q. Did you ever see that document prior to this date?

A. Yes, I did.

Q. When and where and under what circumstances did you see that document?

A. I saw it under the circumstances of being investigated by the I.I.D., which is the Internal, what you call it, Internal Investigation Division of the Police Department.

Q. When was that, sir?

A. Oh, let me see now. Well, it was several months after the scandal broke.

Q. Was that before or after you terminated your services with F. W. Koenecke and Sons, —

A. That was after.

Q. — Incorporated?

A. That was after.

Q. Did you, at any time, authorize anyone to give any information contained in that document under your name?

A. No, I did not.

Q. Now, I hand you, sir, documents which have been marked as Department's Exhibit Nos. T-1303-1, T-1303-2, and T-1303-3 for identification.

Have you examined those, sir?

A Yes, I have.

Q Had you ever seen those documents before I handed them to you?

A No, sir.

Q Did you ever write to Liggett and Meyers, or otherwise communicate to them concerning any shipments of cigarettes to you, sir?

A No, sir.

Q Did you ever write or otherwise communicate to the Brown and Williamson Tobacco Corporation about any shipments of any cigarettes to you?

A No, sir.

Q Did you ever contact Phillip Morris by writing, or otherwise--

A No.

Q --about shipping any cigarettes to you?

A No, sir.

Q Did you authorize anyone else to write on your behalf or communicate on your behalf to either of those three companies?

A No, I did not.

Q Sir, I hand you a document which has been identified or marked, rather, for identification as Department's Exhibit I-1303, purporting to be a license or copy of a license.

Did you ever see that document or any similar document, whether an original or duplicate of that, before I handed that document to you?

A No, I did not.

Q. Did you ever receive any type of a license from
the State of Illinois, or any other State to act as a
cigarette distributor?

No, I never did.

Did you ever apply at any time for a cigarette dis-
tors license?

No, sir.

I hand you a document, sir, which has now been
ed as Department's Exhibit No. B-1303 for identifica
and I call your attention to what appears to be a
n signature of John P. Leehy, appearing on the first
of that document, and that document purports to be
d, and I ask you, after your examination, is that your
ture appearing on that document?

That is not my signature.

Did you ever authorize anyone to sign your name
t document?

No, sir.

Have you ever seen that document prior to my hand-
to you?

No, I have not.

And that is of this date?

Correct.

Sir, I hand you two documents which have been
arked as Department's Exhibit Nos. B-1303-1 and
-1303-2 for identification, purporting to be returns
f cigarettes and I call and invite your attention to
ature which appears thereon on each of those docu-
of John P. Leehy or, I am sorry, of J. P. Leehy?

Yes.

Q Do you see that?

A Yes, I see it.

Q Is that your signature on either of those documents? s that your signature?

A It's not my signature.

Q Did you, at any time, authorize anyone to sign your nme to either of those documents?

A No, I never authorized anybody to.

MR. FREEMAN: Let me see those documents.

MR. MAKAR: Q Sir, did you, at any time, operate y business as a cigarette distributor?

THE WITNESS: A Is that the whole question?

Q Yes.

A No, I did not.

Q Did anyone, at any time, from F. W. Kosnicke and ns, Incorporated, ever inform you that they would pro- ire any type of a cigarette distributor's license or any her license in your name?

A No.

rom the Deposition taken October 30, 1969 at the Office of the Attorney General)

(Witness sworn)

MR. MAKAR: Let the record show that this is a deposition being taken pursuant to the Bankruptcy ct and the Federal Rules of Court.

HEODORE H. ULRICH, called as a witness by the Department of Internal Revenue herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Makar:

Q Would you please state your full name and residence address, sir?

A My name is Theodore H. Ulrich.

Q What is your residence address?

A 2459 New, N-e-w, Street.

MR. FREEMAN: What was the address again.

THE WITNESS: 2459 New Street.

MR. FREEMAN: N-e-w?

THE WITNESS: That's right.

MR. FREEMAN: Chicago?

THE WITNESS: No, Blue Island.

Mr. Makar:

Q How long have you lived there?

A All my life.

Q And how old are you?

A Oh, let's see. I'm forty-eight.

Q What is your business or occupation?

A Right now, truck driver.

Q Working for whom?

A Sibr — F. J. Sibr and Company, S-i-b-r, and Com-
ny.

Q Located where, sir?

A I believe it's 123rd and Laramie, Alsip, Illinois.

Q How long have you been working for them?

A Six months.

Q Sir, were you ever employed by F. W. Koeneke and Sons, Incorporated?

A Yes.

Q At what address?

A 13136 South Western Avenue, Blue Island.

Q When were you employed by them?

A When?

Q Yes.

A Well, I was employed for eleven years.

Q When did you begin, sir?

A Oh, that would be about 1958. April of 1958, I believe.

Q And you terminated your employment with them?

A Yes.

Q When?

to be a license or a copy of a license.

I also want you to mark, Mr. Reporter, another group of documents as Department's Exhibit Nos. P-1141-1 and mark them consecutively or consecutively number them until the end, and I believe the last one is 20.

Mr. Reporter, I want you to mark another group of documents as Department Exhibit Nos. R-1141-1, and mark them consecutively until the end, which, I believe, is 36.

(Whereupon, the Reporter marked said documents as Department's Exhibit Nos. S-1141, A-1141, T-1141-1, T-1141-2, T-1141-3, R-1141, L-1141, P-1141-1

through 1141-20 inclusive, and R-1141-1 through R-1141-36 inclusive for identification.)

Mr. Makar:

Q. Mr. Ulrich, I hand you a document which has been marked as Department Exhibit No. A-11, purporting to be an application, and there appears to be matters on the face and also on the reverse side, and I specifically invite your attention to the signature that appears on the reverse side where it says — there is a signature, and it says: "Ted Ulrich," and I ask you, sir, did you sign that?

A. No, sir.

Q. Did you authorize anyone to sign your name to that document?

A. No, sir.

MR. FREEMAN: May I see that, please.

Mr. Makar:

Q. Did you authorize anyone to make any application on your behalf for a cigarette distributor's license?

A. No, sir.

Q. Sir, I hand you three documents purporting to be letters which have now been marked as Department's Exhibit Nos. T-1141-1, T1141-2, and T-1141-3, respectively, and I ask you, sir, did you receive any of those documents at any time?

A. No, sir.

Q. Did you ever see those documents before I handed them to you?

A. No, sir.

Q Did you contact, or did you authorize anyone on your behalf to contact P. Lorillard and Company to make any shipment of cigarettes to you?

A No, sir.

2 (Deposition taken October 30, 1969 at the office of the Attorney General)

MR. MAKAR: Let the record show that this is a deposition being taken pursuant to the Bankruptcy Act and the Federal Rules of Court.

WILLIE ROBINSON, called as a witness by the Department of Internal Revenue herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

BY MR. MAKAR:

Q Would you please state your full name and residence address, sir?

A My name is Willie Robinson.

MR. FREEMAN: Willie?

THE WITNESS: Right, Willie.

MR. FREEMAN: William?

THE WITNESS: No, Willie, W-i-l-l-i-e, R-o-b-i-n-s-o-n.

MR. FREEMAN: Oh, this is Robinson. I thought it was Ulrich.

BY MR. MAKAR: Q What is your residence address?

A 6604 South Champlain.

Q Champlain?

A Yes.

Q Is that Chicao, sir?

A Yes.

Q How old are you, sir?

A Fifty-three.

Q What is your business or occupation?

A Well, I works for Libby, McNeill and Libby. That's my job.

Q How long have you been working for them?

A Fifteen years.

MR. FREEMAN: Fifty years?

THE WITNESS: No, fifteen.

MR. FREEMAN: Fifteen?

THE WITNESS: Fifteen, fifteen.

BY MR. MAKAR: Q Where are they located?

A 136th and Western.

Q What is your position with them?

A Fork truck driver.

Q What?

A Call it lift truck driver.

Q Lift truck driver?

A Right.

Q Were you ever employed by F. W. Koenecke and Sons, Incorporated?

A Right.

Q And at what location?

A At 131-something in Blue Island.

Q When did you work for them?

A As near as I can guess, it was around, oh, some time in December in 1965 that I started there, and I worked up until 1968, I think.

Well, I worked two years with them; two years.

Q You worked there two years?

A Two years. That's all.

Q This is 1969?

A This is 1969.

Q And last year was 1968?

A Right.

Q Now, were you working there last year, sir?

A No, I wasn't.

Q Then, you were working, or you left there in 1967, sir?

A Oh, let me see whether it was 1967 or the first part of—What year was it when they closed them plumb up? Was that last year?

Q When they closed what?

A Closed them up.

MR. FREEMAN: They closed them down in 1969.

MR. HEYMAN: March of 1969.

BY MR MAKAR: Q They closed them—Well, from what I gather, they ceased to do business this year.

A No, no.

Q How long has it been since you last worked for them?

A That was last year. Last year in February.

Q Of 1968?

A Of 1968.

Q I see. Now, what were your duties when you worked for F. W. Koenecke and Sons, Incorporated?

A Janitor.

Q What were your hours of employment?

A From 6:00 in the afternoon until a quarter to 11:00 at night.

Q That's 6:00 p.m. in the evening?

A Right.

Q Until a quarter after 11:00?

A A quarter to 11:00.

MR. FREEMAN: That's 10:45?

THE WITNESS: 10:45.

BY MR. MAKAR: Q Until 10:45. Was that every day, sir?

A Five days a week.

Q Was that a second job that you had?

A That was a second job, yes.

Q Did you, at any time, operate any type of a business in the sale of cigarettes, or, pardon me.

A No kind of business in my life; cigarettes or nothing else. No kind of business.

Q No kind of business?

A No kind.

MR. MAKAR: Will the Court Reporter please mark the following documents as Department's Exhibit Nos. A-1301 for identification, on the face and the reverse side, and another group of documents which I shall request to be marked as Department's Exhibit Nos. T-1301-1, which is the first document, and the second as T-1301-2, and the third document as T-1301-3, all Department Exhibits, and another document as Department Exhibit No. B-1301, consisting of two pages purporting to be a bond.

Then another document as Department's Exhibit No. L-1301; another group of documents which are to be marked as Department's Exhibit Nos. P-1301-1, the second document P-1301-2 the third document P-1301-3, and the fourth document P-1301-4. That's group exhibit P.

(Whereupon, the Reporter marked said documents as Department's Exhibit Nos. A-1301, T-1301-1, T-1301-2, T-1301-3, B-1301, L-1301, P-1301-1, P-1301-2, P-1301-3 and P-1301-4 for identification.)

Q—that were to be brought in.

Do you have any of those documents with you?

A I don't have any kind of documents.

Q Now, sir, I hand you this document which has been identified and marked as Department's Exhibit No. A-1301, on the face and on the reverse side, and I call your attention, particularly to the reverse side of that document where there appears to be a signature of Willie Robinson.

I ask you, sir, after you have examined that document, did you sign that document?

A No, sir, I didn't.

Q Did you, at any time authorize anyone to sign your name to that document?

A No, sir.

MR. LEVIT: Let the record show that the witness was shaking his head from the start of the question before he even heard the end of it.

BY MR. MAKAR: Q Did you ever see this document before, sir?

A I never saw it.

Q Other than when I just handed it to you.

A No, sir, I did not. I never saw it.

Q Did you authorized anyone to make any application for a cigarette distributor license in your name?

A No, sir.

Q Sir, I hand you a group of documents which have been marked as Department's Exhibit Nos. T.1301-1, T-1301-2, and T-1301-3, and I ask you to examine those and tell us if you ever saw those documents before?

A No, sir.

Q Sir?

A No, sir.

Q Did you ever contact or authorize anyone to contact on your behalf Liggett and Meyers Tobacco Company concerning the shipment of any cigarettes to you?

A No, sir.

Q Sir, did you contact in any manner or authorize anyone to contact on your behalf the Brown and Williamson Tobacco Company concerning the shipment of any cigarettes to you?

A No, sir.

Q Did you or anyone on your behalf whom you authorized to contact the Phillip Morris Company—

A No, sir.

Q —concerning the shipments of any cigarettes to you?

A No, sir.

Q Sir, I hand you a document which has been marked as

12 Q Did you ever apply to the State of Illinois or any other place for a cigarette distributor's license?

A No, sir.

Q Did you authorize anyone to apply on your behalf for a cigarette distributor's license?

A No, sir.

Q Did you ever see this document which I have just identified for you?

A No, sir, never saw it.

Q Did you ever see any similar type of document bearing your name?

A No, sir.

Q Sir, I hand you a group of documents which have now been marked as Department's Exhibit Nos. P-1301-1, P-1301-2, P-1301-3 and P-1301-4 for identification, and I ask you, sir, whether or not you ever saw those documents?

A I have not.

Q Did you, at any time, purchase any tax stamps?

A No, sir.

Q Pardon?

A No, sir.

Q Did you authorize anyone to purchase any tax stamps on your behalf?

A No, sir.

13 Q Sir, I hand you a group of documents which have now been marked Department's Exhibit Nos. R-1301-1 and R-1301-2, together with Schedule CB and invoice

number B14843, and also Schedule CF and I call your attention to a signature which appears on each of the said exhibits where it says, "Signature" and there appears to be the name written, "W. Robinson."

Do you see that, sir?

A Yes, sir.

Q I ask you, sir, did you sign those documents?

A No, sir.

Q Did you authorize anyone to sign those documents on your behalf?

A No.

Q Did you ever file any type of returns with the State of Illinois or anyone else concerning cigarettes, or the sale of cigarettes, or tax stamp purchases, or the fixation of any tax stamps on any cigarettes?

A No, sir.

Q Did you authorize anyone to file on your behalf

A No, sir.

Q —any of those documents?

Q No, sir.

Q Sir, did anyone from F. W. Koenecke and Sons, Incorporated, at any time talk to you about the use of your name—

A No, sir.

Q —for doing, or authorizing, or transacting any type of a business?

A No, sir.

MR. LEVIT: Let the record again show that this witness answered the questions before they were ever completed by counsel.

BY MR. MAKAR: Q Do you understand the question fully, sir?

A Yes.

Q Is that the same answer?

A Yes, sir.

Q Thank you.

A It's the same answer.

MR. MAKAR: Thank you, sir. I have no further questions, sir.

MR. FREEMAN: I want to ask him a question.

Cross Examination

BY MR. FREEMAN:

Q Now, you testified that your signature does not appear on those documents, nor did you ever authorize anybody to sign that for you.

2 (Deposition November 7, 1969 at Office of Attorney General)

FREDERICK B. ZAHNISER, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Examination

BY MR. MAKAR:

Q Sir, would you please give us your full name?

A Frederick B. Zahniser, Z-a-h-n-i-s-e-r.

Q What is your residence address?

A 2581 York Street, Blue Island.

Q What is your business or occupation?

A I am an employee of the High School District Number 218 now.

Q What do you do for them?

A My duties are varied. I deliver things for them, take pictures for them, I.D. pictures.

Q Where is the place you report for work?

A 127th, and Sacramento Avenue, Blue Island.

Q And is that the name of a particular school?

A D. D. Eisenhower.

Q High School?

A Yes, designated as Campus One, because there are six schools in the complex.

Q Sir, were you ever employed by F. W. Koenecke & Sons, Inc.?

A I believe it was around 1959 or '60.

Q And you continued in that position until you terminated your employment?

A Until the end, right.

Q In connection with your employment, sir, did you also operate any type of a business?

A I was one of the license holders for stamping.

Q Well, you were a license holder, but did you operate any business, sir?

A Not as such, no.

Q Did you receive any consideration of any kind for having your name on a license?

A No.

Q Sir, there was a subpoena served upon you for this deposition, was there not?

A Yes.

Q May I see your copy?

A Yes.

MR. MAKAR: Mark this S-1099.

(Document marked as requested.)

BY MR. MAKAR:

Q Sir, I show you this document marked as Department's Group Exhibit S-1099. Attached to this exhibit is a two-page document, marked Exhibit A, which contains a list of documents. Have you examined that list marked Exhibit A?

A I did.

Q Do you have any of those records?

A I have none.

Q Did you ever have any of those records?

A No.

Q Did you ever operate a business under the name of Frederick Tobacco Distributing Company?

A The business was operated, but I didn't operate it.

Q When you say the business was operated—

A That means there was business done under that license, but I was not operator of the business actually.

Q What was the business that was done under that license?

A The selling and delivering of cigarettes and tobacco products; also, probably, some candy was sold, if the customers ordered it, and drug sundries and such.

Q Who operated that business under that name?

A That was operated by the Koenecke firm.

Q Now, in connection with the selling and delivery of cigarettes, did that operation entail the keeping of records?

A Not on my part.

7 A Well, the orders were coming in and being processed by the Koenecke firm.

Q Well, did any orders for the sale of cigarettes come to Frederick Tobacco Distributing Company?

A Not to my knowledge.

Q Now, where did Frederick Tobacco Distributing Company purchase its cigarettes?

A They were purchased from the manufacturer, in various parts of the country, wherever their factories were, Louisville, Winston Salem, Greensboro.

Q What companies were used to purchase cigarettes in the name of Frederick Tobacco Distributing Company?

A American Tobacco Company, Liggett & Meyers, Lorillard, Philip Morris, Reynolds, Brown & Williamson.

Q Did you actually see invoices from these manufacturers for the sale of cigarettes to Frederick Tobacco Distributing Company?

A I don't believe the invoices were made out to Frederick Tobacco Distributors.

Q To whom were they made out, sir?

A To F. W. Koenecke & Sons, Inc.

Q How did cigarettes from F. W. Koenecke & Sons, Inc.—I'm sorry, strike that.

You say there were purchases of tax stamps in

(Deposition taken November 7, 1969 at Office of Attorney General)

EDWARD A. KLOPP, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Examination

BY MR. MAKAR:

Q Sir, would you please state your name?

A Edward A. Klopp.

Q Where do you reside?

A 2359 South May, Chicago, Illinois.

Q Sir, what is your business or occupation?

A Salesman.

Q And by whom are you employed?

A Whitehall Products.

Q Where are they located?

A Wheeling, West Virginia.

Q Where do you work from?

A Home.

Q How long have you been employed by them?

A About the 12th of April, 1969.

Q Immediately prior to that, where were you employed?

A F. W. Koenecke & Sons, 13136 South Western Avenue, Blue Island, Illinois.

Q When did you first start working for them? 11 to do business as a cigarette distributor?

A His only indication was that he needed names, and he asked me for my name and my proper address, and he asked me which bank I banked in.

Q Is that all that was said, sir?

A Yes. Then, he wrote this information down.

Q Did he write it on the application?

A No, he wrote it on a piece of paper he had on his desk.

Q At the time you signed either of those two documents you have in your hand, being A-1095 and B-1095, was any information contained in those documents, or were those documents in blank?

A They were blank.

Q In other words, there was the typewritten material and that was all?

A Yes, the form itself.

Q You mean the printed form?

A The printed form, yes.

Q There was nothing typewritten in there?

A No, sir.

Q There was nothing written in there?

A No, sir, because I know I would have read these listed companies and that is the first time I saw this

16 (From Examination of Robert F. Koenecke before Referee Schaefer on November 12, 1969 in Case No. 69B1647 and 69B3596)

A I never saw any, but I imagine Cianci did. He took care of all of it. I never made out a cigarette report. I imagine he did, but I was never up in the office.

Q Isn't it a fact, sir, that Mr. Zahniser took care of the cigarette stamp purchases that were made in the State of Illinois?

A Yes, he made out the requests.

Q Now, would he inform you that a certain license would reach the $700,000 limit insofar as purchase of cigarette tax stamps were concerned?

A For me?

Q Yes.

A No, I would ask him.

Q And what would you do after you asked him?

A I would say, "We will have to get another license."

Q And then would you proceed to select the name to get another license?

A Yes.

Q Did you then proceed to assemble all of the documents that were necessary to procure that license?

A Documents were needed with three letters from 17 three loading manufacturers.

Q There was also a bond.

A A bond.

Q And an application. Am I correct?

A Yes.

Q Now did you secure all of these, or were they secured under your direction?

A Under my direction.

Q They were all secured under your direction, sir?

A Yes.

Q Now, as I understand all of these cigarette tax stamps that were purchased, individual licensees names,

were all paid by the F. W. Koenecke & Sons check, am I correct?

A Yes.

Q At what bank was that check drawn?

A First National Bank of Blue Island.

Q Did you at any time have any other banking account upon which checks were drawn?

A Harris Trust.

Q That is Harris Trust & Savings Bank of Chicago, sir?

A Yes.

THE REFEREE: Any other?

THE WITNESS: No.

THE REFEREE: She may have been on some of those though, I suppose.

THE WITNESS: No, I don't think so.

THE REFEREE: All right you can go ahead.

BY MR. MAKAR:

Q Mr. Koenecke, would you please tell us in which banks were the corporate accounts, and in which banks were the savings and loans or other institutions were your own personal accounts?

A First National Bank of Blue Island and Gary-Wheaton were corporate accounts; Home Federal, Chicago Heights were corporate moneys like C.D.'s; Harris Bank was corporate money; Harvey Savings & Loan was my money; Merrill Lynch stock transactions was my money; and, I think Continental Bank was my money—no, Continental Bank was corporate.

Q How about Chicago Heights Savings & Loan?

A Corporate.

Q And Home Federal was personal?

A Corporate.

Q Going back to the original question, sir, and that is: When purchases of tax stamps were made during the period of January 1963, to and including

26 Sons, Inc. went out of business where were those checks?

A Stored in our basement.

MR. LEVIT: Your Honor, may we merely make this statement: At the time Mr. Heyman took possession there were voluminous records, including boxes and canceled checks on the premises—

MR. HEYMAN: 144 cartons.

MR. LEVIT: We do not know whether those cartons contained the canceled checks, but presumably they could be found if anyone wanted to search those records.

MR. MAKAR: Thank you.

BY MR. MAKAR:

Q Sir, with respect to the purchase of cigarettes, did any of the individual licensees that had the licenses at your place of business, did any of them purchase any cigarettes?

A No.

Q Were any cigarettes purchased by F. W. Koenecke & Sons under their name?

A Yes. Oh, no. Not cigarettes, no.

Q There were no cigarettes purchased under the individual licensee's name then?

(From Deposition taken November 14, 1969 at Office of Attorney General)

MR. MAKAR: Would you have the record show that this is a deposition taken pursuant to the provisions of the Bankruptcy Act of the United States and also of the Federal Rules of Civil Procedure.

RICHARD CREACH, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Examination

BY MR. MAKAR:

Q Sir, would you please state your name?

A Richard Creach.

Q What is your residence address?

A 14910 Seeley.

Q Is that South Seeley?

A Yes, because it's in Harvey.

Q Harvey, Illinois?

A Right.

Q What is your business or occupation?

A Now? At the present time?

Q Yes.

A I'm a timekeeper for Wyman Gordon.

Q How do you spell that?

W-y-m-a-n Gordon.

Q G-o-r-d-o-n?

A Right.

Q How long have you been with them?

A Seven months now.

Q Where are you employed? That is, the address.

A 147th and Wood Street.

Q Is it on 147th or Wood?

A Well, it starts on 147th. Yes, it's on 147th and Wood and runs back, you know. It's a big place.

Q That's also in Harvey?

A Right.

Q Immediately before that, where were you employed, sir?

A Well, I was with Koenecke then.

Q Is this F. W. Koenecke & Sons, Inc.?

A Yes.

Q What was their address?

A 13136 South Western.

Q In Blue Island?

A Blue Island.

Q How long were you employed by F. W. Koenecke & Sons?

A Fifteen years.

Q What is the last position you held with them?

A Bookkeeper.

Q Koenecke & Sons, Inc., were you employed anywhere else?

A No.

Q Did you have any type of business of any kind that you were operating yourself?

A No.

Q Sir, I hand you a document which has been marked as Department's Group Exhibit A-1103 for identification, purporting to be an application, with certain matters on the face and also on the reverse side thereof, and I invite your attention to a signature that appears on the reverse side of this exhibit. Do you see where it says, "Richard Creach"?

A Right.

Q Would you please examine that, sir?

I ask you, sir, did you sign that document?

A Right.

Q That is your signature?

A Yes, that is my signature.

Q All right, sir. Now, sir, would you please examine this document and, to the best of your recollection, tell us under what circumstances you signed that document?

A Well, Robert Koenecke, the owner, he wanted to use my name to purchase a cigarette license to buy cigarette stamps and—well, me and others, you know, had to sign this so he could purchase cigarettes. He had—I don' know how many licenses he had, but quite a few of them, you know.

Q First of all, sir, would you please tell us when you signed that application?

A Oh, I can't give you the date. I don't even know. I can't tell you the day or the date.

Q At that time, were you working as a bookkeeper, sir?

A No. I was checking bills and auditing bills, cigarette invoices rather.

Q I see. You had not yet become a bookkeeper?

A No.

Q Were you working in the office portion?

A Right.

Q Would that be up on the second floor of the plant?

A Second floor, right.

Q And at that time, who else was working in that office?

A Well, there was starting from the front office, there was Mrs. Koenecke—

Q That's Imogene Koenecke?

A Right. Sidney Beckman, Nick Cianci, myself,

2 (Deposition of Richard Creach taken November 14, 1969 at the Office of the Attorney General).

MR. MAKAR: Would you have the record show that this is a deposition taken pursuant to the provisions of the Bankruptcy Act of the United States and also of the Federal Rules of Civil Procedure.

RICHARD CREACH, called as a witness herein, having been first duly sworn, was examined and testified as follows:

Examination

BY MR. MAKAR:

Q Sir, would you please state your name?

A Richard Creach.

Q What is your residence address?

A 14910 Seeley.

Q Is that South Seeley?

A Yes, because it's in Harvey.

Q Harvey, Illinois?

A Right.

Q What is your business or occupation?

A Now? At the present time?

Q Yes.

A I'm a timekeeper for Wyman Gordon.

Q How do you spell that?

A W-y-m-a-n Gordon.

Q G-o-r-d-o-n?

6 Koenecke & Sons, Inc., were you employed anywhere else?

A No.

Q Did you have any type of business of any kind that you were operating yourself?

A No.

Q Sir, I hand you a document which has been marked as Department's Group Exhibit A-1103 for identification, purporting to be an application, with certain matters on the face and also on the reverse side thereof, and I invite your attention to a signature that appears on the reverse side of this exhibit. Do you see where it says, "Richard Creach"?

A Right.

Q Would you please examine that, sir?

I ask you, sir, did you sign that document?

A Right.

Q That is your signature?

A Yes, that is my signature.

Q. All right, sir. Now, sir, would you please examine this document and, to the best of your recollection, tell up under what circumstances you signed that document?

A Well, Robert Koenecke, the owner, he wanted to use my name to purchase a cigarette license to buy

9 Q And he did not make any announcement, or did he, "I want to use all of your names," or anything like that?

A No.

Q Was there any period of time, that you know of, in which there was a meeting, in which Mr. Robert Koenecke asked any or all employees to use their names?

A No.

Q Now, sir, to the best of your recollection, at the time that Mr. Robert Koenecke requested using your name, were there any other licenses of other employees in effect at the time, to your knowledge?

A I suppose so. I think so. I think there was.

Q Did you ever see any?

A No.

Q Did anyone talk to you or tell you that they had other licenses?

A No, not at the time. No.

Q Now, sir, when Mr. Robert Koenecke approached you, to the best of your recollection tell us what he said and what you said.

A Well, he told me that he wanted to use my name to purchase, you know, stamps for the cigarettes, you know, and he told me—let's see. I can't remember

10 now how many licenses he had to have.

Q Did he tell you that he had any licenses?

A Well, no. He said that he had to get some more, you know, to buy cigarette stamps, to get the discount, see, for the cigarette stamps.

Q And by that, you assumed he had other licenses?

A Right.

Q And is this the basis upon which you said he had other licenses?

A Right.

Q All right. Now, would you continue to tell us what he said to the best of your recollection?

A Well, this was about the extent of it. He said he had to, you know, have—he asked me could he use my name as a dummy company, you know, to purchase cigarette stamps so he could get the discount.

Q Did he offer you any money for the use of your name?

A No, none whatsoever.

Q Did you ask him for any money?

A No.

Q Or other consideration for the use of your name?

A No.

Q Did he say anything to you that if you did not permit your name to be used that he would go out of business, or anything of that nature?

A No.

Q Or that he would lose business?

A No.

Q And what was your response to that, sir?

A Well, I told him, "Yes." I gave him permission to use my name.

Q Now, sir, did he at that time have this application, which has been marked as Department's Group Exhibit A-1103 for identification?

A No, not at that time. That came later, you know.

Q How much later, sir?

A Oh, I would say roughly a month.

Q Very well. And, in the meantime, was there any further conversation about the use of your name?

A No.

Q By anyone?

A No.

Q Now, sir—then approximately a month later, he came to you with this application?

A Yes.

14 A Oh, no.

Q Did you at that time intend to be engaged in the business as a distributor of cigarettes in any other state?

A No.

Q Did you intend at that time to be engaged in any business whatsoever?

A Oh, no.

Q Did you at that time notice that, where it says:

"Name of applicant: Richard Creach, d/b/a—"

Indicating "doing business as"—

"Richard Tobacco Distributing Company"?

A No.

Q Or any other?

A No.

Q And Item Four, where it says:

"Business name and address, Richard Tobacco Distributing Company, at 13136 South Western Avenue, Blue Island."

did you intend to have a business name and address at that address or any place else?

A No.

Q Now, sir, I call your attention to Item Eight appearing on this form, where it says:

"With whom do you do your banking business?"

And the typewritten matter is:

"First National Bank of Harvey, Harvey, Illinois."

Now, I ask you, sir, did you at that time intend to do any banking business either at that bank or any other bank?

A Well, actually, no. This is where I have my checking account, that's why that is down.

Q That was your own personal account?

A Yes.

Q That was not a business checking account?

A No.

Q All right. Now, in Item Nine, where it says:

"Do you own or lease premises in which business is located?"

And the typewritten portion is:

"Lease."

Did you at that time intend to lease any premises?

A No.

Q At either 13136 South Western Avenue, Blue Island, or any other place for any business?

A No.

Q In Item Fourteen, where it asks:

"How long have you been engaged in the sale of cigarettes or other tobacco products?"

And it's typewritten in there:

"New business."

Now, you never intended at that time to have any new business, did you?

A No.

Q And then, in Fifteen, Item Fifteen of this same application:

"From what source do you intend to buy cigarettes?"

And you answered:

"Manufacturers."

Did you intend to buy any cigarettes from any sources for the business of transacting a distributor business?

A No.

17 Q The only cigarettes you may have intended to purchase would be just common, ordinary cigarettes that every consumer purchases?

A Right.

Q To smoke yourself?

A Yes.

Q But you were not intending to buy those from any manufacturers, were you?

A Oh, no.

Q And then, it says:

"If direct from manufacturers, list below the names and addresses of such manufacturers."

A And it says "Lorillard,"—

Q You saw those names?

A —"Liggett & Meyers, Phillip Morris."

Q Did you intend to buy any cigarettes from any of those manufacturers?

A No.

Q Sir, did you also note this, where it says, after the question and answer of Sixteen:

"Important."

Would you read that for the record?

A "Falsification of any of the

19 A No.

Q Did Mr. Sidney Beckman sign this application in your presence, where it says:

"Notary Public."

A No, he didn't.

Q Did you at any time appear before Sidney Beckman, who is shown to be a notary public herein, and ask him to notarize it?

A No, I didn't ask him to notarize it. No, that came from Bob.

Q Did you see Bob doing that?

A No.

Q Did Mr. Robert Koenecke ever mention to you that this application would be under oath?

A No.

Q Did he ever mention to you that he would have it notarized?

A Well, I knew it had to be notarized. I knew this myself.

Q How did you know that, sir?

A Well, in order to buy the cigarette stamps, you know, because I think one of these applications was sent to the cigarette companies. Now, this is my thinking. I think one of these applications was sent into the Department of Revenue before they could get permission to buy stamps.

Q Did they tell you that before you signed the application or did they tell you that after you signed the applicaion, or did they tell you before and after you signed this application?

A I can't remember now. You are talking about years past.

Q I see. Did you know at that time that there had to be letters from cigarette companies indicating that they would be willing to sell you some cigarettes?

A At the time I signed this?

Q Yes.

A No, to be truthful with you.

Q Now, I hand you a group of documents which have been marked as Department's Group Exhibit T-1103-1, 2 and 3 for identification, and I ask you, sir: Did you ever see those letters at any time before I handed them to you?

A No.

Q Did you know that anyone was going to contact any of these companies to get these letters indicating that they would sell you some cigarettes?

A No, I didn't know that.

Q Did you give anyone any permission to contact any of these companies to secure those letters?

A No.

Q Sir, I hand you aother document which has been marked as Department's Group Exhibit B-1103, purporting to be a bond, and I call your attention to a signature appearing about the middle of the face of this bond.

A Yes.

Q I ask you, sir, is that your signature?

A That's right.

Q Now, under what circumstances did you sign that document?

A Well, this is insurance. This would be signed for the company, you know, doing business as Richard Tobacco Distributing Company. You had to have a bond for the company, you know, cigarette company insurance. This is why I had to sign that, you know.

Q Who asked you to sign it?

A Bob.

Q Bob Koenecke?

A Right.

Q And was it at the same time that you signed the application?

A I think it was, yes.